

~~HOUSE ST. WORK~~
TODD

**Written Statement
of
Teresa Todd
Presidio County Attorney
Presidio County, Texas**

✓

11

Good **Afternoon**. My name is Teresa Todd, and I am the elected County Attorney of Presidio County, Texas. Presidio County is the county in far west Texas which is immediately down-wind and down-river **from** the proposed low-level radioactive waste site in Sierra Blanca, Hudspeth County, Texas. We are aligned in a group with four other units of local government **from** the U.S. and Mexico as opponents of the facility in the licensing proceeding in Texas. I am honored to be here today to address you regarding the Texas-Maine-Vermont Compact.

My purpose today is to present arguments against the ratification of this compact. Unlike the other nine regional compacts which have already received federal ratification, the location for this proposed waste site in the host site of Texas has been chosen in advance. In 1995, the Texas legislature drew a 300 square mile box in Hudspeth County, Texas, and mandated that the waste disposal facility had to be located within these parameters. While I am **sure** that none of you wish to become involved in Texas politics, this action by the Texas legislature in essence tied the siting of the proposed facility with the passage of this compact, so I will address each of these issues today.

While I will not dwell on the inadequacies and dangers inherent in the proposed site, I would like to simply state that the proposed facility is situated in the most seismically active region of the state, only sixteen miles **from** the Rio Grande River, in a very remote, poor and largely minority area. The majority of the residents in Hudspeth County are against the involuntary siting of **the** proposed waste site in Sierra **Blanca**, and the overwhelming majority of the residents and units of local government in far west Texas are opponents of the site.

Controversy in the Texas Legislature regarding the project

Before you consider ratification of this compact, I would like to make you aware of the controversy surrounding the project which erupted in the Texas legislature this session. Unlike any other host state, the state of Texas has decided to run the proposed facility itself rather than entrusting that job to a private waste contractor. The state agency set up to oversee the planning, construction and operation of the facility is the Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA), which was established in 1981. Sixteen years, three official sites and 45 million dollars later, the TLLRWDA has still not secured a license to operate the proposed facility. In February of this year, the Texas House Appropriations Committee unanimously voted to “zero fund” the budget of the TLLRWDA. Several of the committee members voiced concern regarding the inability of the agency to get the job done, and expressed a preference for the use of an alternate site in Andrews County and the utilization of a private waste contractor. The Senate Finance Committee voted to continue to fund the agency, so the issue was decided in the Conference Committee on Appropriations. After heavy lobbying by the TLLRWDA and the Governor, the vote to zero fund the TLLRWDA was narrowly defeated by a margin of 5 nays to 4 ayes. This close vote clearly indicates a lack of confidence in the TLLRWDA and serious concerns regarding the Sierra Blanca site.

Economic impact on Presidio County and surrounding communities

Like Hudspeth County, Presidio County is located in what is called far west Texas due to its remoteness from the major population centers of Texas. The closest commercial airport is three hours from Marfa, the Presidio County seat. Although Presidio County is larger in size than four U.S. states, the population of the entire county is less than ten thousand people. The Presidio County

line is approximately 74 miles by highway and 40 miles as the crow flies from the proposed site in outside Sierra Blanca.

Perhaps the most difficult point to convey to anyone who has not lived in far west Texas is the **interconnectedness** of the rural far west Texas counties. Due to the immense size of the counties in our area, it is difficult to imagine our existence as anything other than islands. In reality, however, the opposite is true. All of far west Texas is viewed primarily as a region, both politically and practically. Presidio County and Hudspeth County, along with Culberson, Brewster and Jeff Davis Counties, together comprise the newly created 394th Judicial District. Both Presidio County and Hudspeth County are members of the Rio Grande Council of Governments. As a result of these affiliations, our county has inexorable political and geographical ties to Hudspeth County which **cannot** be denied or minimized. To put it simply, what happens in our sister county affects us.

While it is undeniable that some people in Hudspeth County have and will continue to benefit economically from the location of the proposed Sierra Blanca waste site, the opposite will prove to be true in Presidio County and the surrounding region. Because of the economic situation in Presidio County, we fear that we are particularly vulnerable to this type of financial harm.

Presidio County is classified as an economically distressed county by the state of Texas due to our proximity to the border and the fact that the per capita income in our county is twenty-five percent below state averages. Unemployment in Presidio County is the highest in the state, coming in at over thirty percent (30 %) on a routine basis. In addition to the incorporated city of Presidio, there are several **colonias** on the Rio Grande located in Presidio County. Many of the colonia residents do not speak or read English, and still rely on the Rio Grande for their livelihoods. Until recently, colonia residents of Presidio County also relied on the river for their drinking water. Because our county is so poor, we qualify for numerous state and federal grants, which have enabled

us to provide water and waste water to our colonia residents.

We believe that the proposed site will result in a decrease in property values and in marketability of land in our county and in our region. This has already occurred in Hudspeth County, where a couple with a ranch for sale received letters from prospective ranch purchasers stating that they changed their minds about making an offer on the ranch once they found out about the proposed waste site nearby. "Proposed Nuclear Dump Stifles Sale of Beautiful Eagle Mountain Ranch," Hudspeth County Herald and Del Valley Review, March 13, 1997. At the hearings conducted by the State Office of Administrative Hearings in Sierra Blanca to determine who would have party status to participate in the state licensing hearings for the proposed facility, a Presidio County real estate agent testified that he had heard prospective buyers of property in Presidio County change their minds when they found out about the proposed dump.

With the only two national parks in Texas in our far west Texas region, our area is known primarily for its open spaces, rugged mountains, and pristine beauty. Tourism has replaced ranching as the primary industry of our region, and many Presidio County residents rely on tourism in the Big Bend area for their livelihoods. Our area is attractive to tourists and travelers precisely because it is still a **frontier**, largely untouched by industry and civilization. A low-level radioactive waste disposal facility is at odds with our pristine reputation, and will hurt tourism region-wide.

Presidio County is making attempts to turn our economy around. We recently established an enterprise zone in the northern part of our county to encourage environmentally responsible businesses to locate locally. While we have been fortunate so far and have attracted two businesses, we fear that our continued efforts will be compromised by the Sierra Blanca site. The development consultant for one of the companies locating in the zone stated that our town was chosen due to its pristine surroundings and commitment to family values and environmental responsibility. Should

our area become better known for its radioactive waste industry, our hopes of locating other environmentally sound businesses in our area will never be realized.

The relationship between Presidio County's economy future and the proposed Sierra Blanca site were highlighted in the March 1997 issue of Texas Monthly in the lead reporter article by Joe Nick Patoski entitled "Dumped On." The economic arguments covered in the story, however, are not unique to Presidio County. The negative economic effects of the dump site will be felt region-wide in an area which is already economically distressed.

The majority of the local governments in far west Texas, as well as several local governments on the border in south Texas, have passed formal resolutions in opposition to both the proposed Sierra Blanca site and to the Texas-Maine-Vermont compact. Presidio County passed a resolution in opposition to the proposed Sierra Blanca waste disposal site in July of 1995. To date, resolutions opposing the facility have been passed by the counties of El Paso, Jeff Davis, Culberson, Val Verde, Webb, Starr, Hidalgo, Reeves, Cameron, Zapata, and Brewster, as well as the cities of Austin, Del Rio, Brackettville, Marfa, Van Horn, El Paso, Alpine, and McAllen.

Impact on international relations with Mexico

Due to our proximity to the border, we are very sensitive to decisions made on the state and federal levels which could negatively impact our county's relations with Mexico. We believe that the ratification of this compact would have a negative impact on our international relations with Mexico. In 1983, the Presidents of the United States and Mexico signed the La Paz agreement, in which both nations agreed to "pursue in a coordinated matter practical, legal, institutional and technical measures for protecting the quality of the environment in the border area" and to "assess, as appropriate, projects that may have significant impacts on the environment of the border area,

so that appropriate measures may be considered to avoid or mitigate adverse environmental effects.” Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area, August 14, 1983, U.S. Mex., arts. 6, 7.

The proposed Sierra Blanca site, a mere sixteen miles from the Rio Grande, is clearly within the “border area” that the La Paz agreement was designed to protect. The Texas-Maine-Vermont compact as written does not require Texas as the host state to honor this federal agreement with Mexico. In the last session, Congressman Coleman tiled an amendment to the compact making Congressional ratification of the compact contingent upon the selection of a site by the host state that was more than sixty miles from the border.

The Texas legislature has stubbornly refused to either recognize or comply with the requirements of the La Paz agreement, and ignores the possible international consequences which can flow from their location of the “Hudspeth County box” in close proximity to our border with Mexico. Legislation was introduced at the state level which would require the state of Texas to comply with the La Paz agreement in selecting a site. Despite the large west Texas contingent of officials and citizens who traveled to Austin to support these bills, they died in committee.

There is extensive opposition to the Sierra Blanca site in Mexico. Resolutions in opposition to the proposed facility have been passed by the State Congresses of the border states of Coahuila and Chihuahua as well as the City Council of Juarez. Mexican schoolchildren have gone to Austin to protest the proposed disposal site. A letter of protest was written by the Governor of the state of Chihuahua to Governor Bush. The Chair of the Mexican Senate Ecology and Environment Commission wrote a protest letter to the US. Senate Environment and Public Works Committee.

Any serious consideration of the compact and the site itself tells the Mexican officials and

citizens that, while the U.S. expects the nation of Mexico to step up its environmental protection policies on their side of the border, the Americans have no intention of doing the same. The clear message sent to the Mexican federal and state governments is that the state of Texas plans to use the border as a dumping zone, and ratification of this compact signals federal support for this egregious plan. This effectively removes any incentive for the Mexican government to attempt to remedy environmental problems on its side of the border, and fosters a climate of mistrust and hostility between the nations on environmental issues.

When I testified before the Texas House Committee on Environmental Regulation, one state representative brought up the Samalayuca site outside Juarez as evidence that Mexico was also in violation of La Paz. Several myths have circulated regarding this site which I would like to dispel for the record. The Samalayuca disposal site, roughly forty miles outside Juarez, is not comparable to the proposed Sierra Blanca site in any measure. The **need** for the site resulted **from** the unknowing dismantling of an X-ray machine by a junk dealer in Juarez. The parts were sold, melted down and made into **rebar** and table legs. It was later discovered that these parts were contaminated with Cobalt-60, the radioactive element used for X-rays. Unfortunately, however, the parts had already been distributed in Chihuahua and the Southwestern U.S. before the danger was realized. A concerted effort was made to recover the parts and return them to Mexico, where they are now buried in the Samalayuca site.

The Samalayuca site preceded the La Paz agreement, unlike the proposed Sierra Blanca site. The site is only used for the storage of these contaminated materials, whereas the Sierra Blanca site is slated to **take** waste **from** Texas, Maine and Vermont, and can also take contract waste from any source on just a majority vote of the compact commissioners. The radioactive life of the materials buried in Samalayuca is roughly fifty years, which is scant in comparison to the thousand and

million year radioactive lives of the materials from nuclear reactors which are projected to comprise the bulk of the radioactivity in Sierra Blanca.

Texas state law and administrative process provide inadequate safeguards

If Congress ratifies the Texas-Maine-Vermont compact, the federal government is in effect relinquishing the power to control interstate commerce in radioactive waste. Prior to making that decision, Congress should ensure that the principles and standards that federal law imposes are found and implemented through the state law of the compact host state. In the field of low-level radioactive waste, unfortunately, the Texas law does not have standards comparable to those found in the federal scheme. For example, the Low Level Radioactive Waste Act of 1980 specifies that host states are to have a rational site selection process. The drawing of a box hardly meets this criteria. Neither state law or regulations require consideration of environmental justice issues which are mandated in federal decision-making processes by President Clinton's Order on Environmental Justice and by Title VI of the Civil Rights Act of 1964.

The potential impact on international relations which could result from the overwhelming Mexican opposition to the site could certainly be considered in the federal process, but has largely been ignored in the state administrative hearings process. Numerous Mexican officials were denied standing to even participate in the hearings. When they arrived with their supporting documentation, all of which is admissible in Mexican courts, they were denied the right to put their evidence in the record. The state administrative law judges turned down repeated requests to have the proceedings and tiled documentation translated into the Spanish language.

Nothing in state law addresses the issue of financial liability and accountability for harm occurring in the nation of Mexico as a result of an accident at the Sierra Blanca site. It is logical to

assume, however, that if this situation occurs, the Mexican federal and state governments will look both to the compact participants and to the U.S. government for recompense.

Additionally, the TNRCC licensing process does not require proof of financial viability of the project prior to licensing. In 1994, Nuclear Regulatory Commission Chair Ivan Selin stated that “there isn’t that much low-level waste; two or three sites could handle all the waste, if it weren’t for the politics.” The projected rates for waste disposal at Sierra Blanca are in the range of \$300 to \$400 a cubic foot, in comparison to \$60 a cubic foot at Utah’s Envirocare. It is rumored that the alternative Texas site, in Andrews County, has agreed (if permitted) to take Department of Energy low level radioactive waste for less than \$20 a cubic foot. With projected rates far exceeding the market rates, it is highly unlikely that the Sierra Blanca site, if licensed, will be financially viable. The TLLRWDA ignores this possibility, stating that “[e]conomic risks associated with operation of the facility are minimal. Competition will be significantly minimized, if not eliminated.” TLLRWDA License Application, Sec. 6.1-1 (Rev. 5). In the TLLRWDA’s perfect world, “[t]he annual inflation rate was taken to be ml.” The risk of loss for this economic naivete falls to the utility rate payers, as the site is to be financially supported by user fees.

The state of Texas still clings to the involuntary site selection process although it has proven to be far more expensive than the voluntary site selection process now utilized by most of the other host states. While the TLLRWDA has received a sizable appropriation to cover legal fees for the licensing process, they have not budgeted for any post-licensing legal fees, which have been necessary in other host states with involuntary site selection processes.

Primary function of site is to dispose of waste from nuclear utilities, not medical waste

On both the state and federal level, I have heard arguments that this low-level disposal

facility is desperately needed in order to deal with medical waste, and that medical treatment and research will not advance if this facility is not constructed in Texas. While I have no doubt that the individuals making these arguments are genuine in their convictions, it is clear from an objective perspective that these arguments do not accurately reflect the true motivation for the site. According to the TLLRWDA figures, more than 99% of the radioactivity at the proposed dump will come **from** nuclear utilities. In the United States in 1995, only 6.13 curies of medical waste were shipped for disposal, while the utilities shipped 71,734.81 curies. In the same time period, Texas shipped less than one curie of medical waste, but 1798.8 curies were shipped for disposal **from** utilities. 1995 State by State Assessment of Low-Level Radioactive Waste Received at Commercial Disposal Sites, DOE/LLW-237. In 1995, 100% of the waste shipped **from** Vermont came **from** utilities, with utility waste comprising 99.6% of shipments from Maine.

Most of the medical waste from treatment and diagnosis has a half life measured in hours and days and is stored above ground, sometimes on site. When it decays until it is no longer detectably radioactive, it is then disposed of in a regular landfill. Some of the longer lasting radioactive materials used in medical research are being replaced with nonradioactive alternatives or with shorter-lasting radioactive materials.

The waste **from** reactors, which is projected to comprise over 99% of the radioactivity to be disposed of at the Sierra Blanca site, has an exponentially longer radioactive life than medical waste. This waste has higher concentrations and greater amounts of radioactivity. Iodine 129, for example, has a half life of 16 million years, which would be radioactively hazardous for 160 to 320 million years. To cloak this industrial waste in the humanitarian garb of medical research and treatment is analogous to overlooking the atrocities committed by Mussolini because all the trains ran on time.

Advisable option is to reject the Texas-Maine-Vermont compact

There is currently no crisis in the disposal of low-level radioactive waste in Texas. Medical waste from the University of Texas is being held in Fort Stockton, and industrial waste is being shipped to either Barnwell, South Carolina or to Utah.

There is considerable controversy in Texas regarding the proper site for the proposed low-level waste disposal facility, especially in light of the questionable science involved in choosing the Sierra Blanca site. Andrews County site has been gaining political ground in Texas as an alternative site to Sierra Blanca, and has some strong support in the Texas legislature. A waste disposal site already exists in Andrews County, operated by Waste Control Specialists, which is licensed to take hazardous waste and has a pending application to take DOE mixed waste.

The General Accounting Office's has stated that ". nearly three times more disposal facilities are being contemplated than are financially viable." GAO, "Radioactive Waste: Status of Commercial Low-Level Waste Facilities," 1995. I urge you to reject the Texas-Maine-Vermont compact until the issues discussed above can be more fully addressed.

I thank you for the opportunity to address these important issues today. This concludes my remarks.